

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIDI DOUMBIA,

Plaintiff,

-against-

FATOU BAMBA,

Defendant.

24-CV-1088 (LTS)

ORDER OF DISMISSAL
WITH LEAVE TO REPLEAD

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the Court’s federal question jurisdiction and asserting that Defendant subjected him to “aggravated assault and battery.” (ECF 1, at 2.) By order dated May 17, 2024, the Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees. For the reasons set forth below, the Court dismisses the complaint but grants Plaintiff 30 days’ leave to replead his claims in an amended complaint.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they *suggest*,” *Triestman v. Fed. Bureau of Prisons*, 470

F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

BACKGROUND

Plaintiff, who resides in Bronx, New York, brings this action against Sidi Doumbia, for whom he provides an address in Bronx, New York. Plaintiff seeks money damages for Defendant’s alleged assault and battery of him.

The following information is taken from the complaint. On July 27, 2021, in Plaintiff’s private room in a building in the Bronx, Defendant “intentionally assaulted” Plaintiff multiple times. (ECF 1, at 5.) Plaintiff describes the incident as follows:

Defendant intentionally strangled me, hit me about the face with closed fist, struck me in the chest and beat me up. She completely destroyed my shirt when strangling me and as I was trying to escape from her strangulation (this is visible on my shirt in the video recording I will include as proof). Before the assault and battery occur[red], I asked defendant multiple times to stop and leave my room, but she kept harassing me, mocking me and ended up by beating me up and strangling me (All these are visible in the video recording of the incident that will be included in with the document).

(*Id.*) Plaintiff sustained injuries and was taken to the hospital for examination after the assault.

Plaintiff attaches to the complaint documents indicating that Defendant was arrested and pleaded guilty in the Bronx Criminal Court to several charges arising from the incident. Plaintiff seeks compensatory damages in the amount of \$40,000 for his hospital bills and other losses, and punitive damages in the amount of \$120,000. He also submits a motion to provide a flash drive with video recording of the incident. (ECF 3.)

DISCUSSION

The subject-matter jurisdiction, or authority, of the federal district courts to hear cases is limited and is described generally in 28 U.S.C. §§ 1331 and 1332. Under 28 U.S.C. § 1331, a federal district court has “federal-question jurisdiction” only if the case involves a matter of federal constitutional or federal statutory law. Under 28 U.S.C. § 1332, a federal district court has “diversity-of-citizenship jurisdiction” to consider claims under state law only when the plaintiff and the defendant are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000. In the federal system of limited jurisdiction, at any stage of the proceedings, the court “may raise the question of whether the court has subject matter jurisdiction.” *United Food & Com. Workers Union, Loc. 919, AFL-CIO v. CenterMark Prop. Meriden Sq., Inc.*, 30 F.3d 298, 301 (2d Cir. 1994) (quoting *Manway Constr. Co., Inc. v. Hous. Auth. of the City of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983)). In fact, if a court determines that it lacks subject-matter jurisdiction, it must dismiss the case. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“[S]ubject-matter delineations must be policed by the courts on their own initiative . . .”).

Plaintiff invokes the Court’s federal question jurisdiction, and in response to the question on the complaint form as to which of his federal constitutional or statutory rights have been violated, he writes “aggravated assault and battery,” “strangulation,” criminal mischief,” and “harassment and defamation.” (ECF 1, at 2.) Plaintiff, however, does not identify any federal laws or any other federal legal framework from which his claims arise. Because Plaintiff does not “establish[] either that federal law creates the cause of action or that [his] right to relief necessarily depends on resolution of a substantial question of federal law,” the court does not have federal question jurisdiction of his claims. *Bay Shore Union Free Sch. Dist. v. Kain*, 485

F.3d 730, 734-35 (2d Cir. 2007) (quoting *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006)).

Plaintiff's claims of assault and battery appear to arise under state law, but he does not allege facts demonstrating that the Court has diversity jurisdiction of his claims. To establish diversity jurisdiction under Section 1332, a plaintiff must allege that the plaintiff and the defendants are citizens of different states and establish to a "reasonable probability" that the claim is in excess of \$75,000.00, the statutory jurisdictional amount. *See* 28 U.S.C. § 1332(a); *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998); *Colavito v. N.Y. Organ Donor Network, Inc.*, 438 F.3d 214, 221 (2d Cir. 2006). For diversity purposes, an individual is a citizen of the State where he or she is domiciled. *Palazzo ex rel. Delmage v. Corio*, 232 F.3d 38, 42 (2d Cir. 2000) (defining domicile as the place where a person "has his true fixed home . . . and to which, whenever he is absent, he has the intention of returning").

Here, Plaintiff fails to satisfy his burden of alleging facts showing that the Court has diversity jurisdiction of this action. *Linardos v. Fortuna*, 157 F.3d 945, 947 (2d Cir. 1998) (plaintiff bears the burden of establishing that diversity jurisdiction existed at the time the action was commenced). He lists addresses for himself and Defendant in New York, but he does not plead facts about his domicile or about the citizenship of Defendant. Plaintiff does not allege sufficient facts to demonstrate that the Court has diversity jurisdiction of this action.

Because Plaintiff has failed to allege facts showing that the Court has either federal question or diversity of citizenship jurisdiction of this matter, the Court dismisses Plaintiff's complaint for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

LEAVE TO AMEND

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its

defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts “should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)).

Because Plaintiff has not alleged facts about where the parties are domiciled, the Court cannot say at this time that amendment to establish diversity jurisdiction would be futile. Therefore, the Court, in an abundance of caution, grants Plaintiff 30 days’ leave to replead his claims in an amended complaint. If Plaintiff wishes to proceed under the Court’s diversity jurisdiction, he must allege facts demonstrating that he and Defendant are citizens of different states and that the value of his claims exceeds \$75,000.00

CONCLUSION

The Court dismisses this action for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). The Court denies Plaintiff’s motion (ECF 3) to submit a flash drive with a video recording of the incident. All other pending matters in this case are terminated.

The Court, however, grants Plaintiff 30 days’ leave to file an amended complaint in which he alleges facts sufficient to show that the Court has diversity jurisdiction to consider this action. If Plaintiff fails to file an amended complaint within the time allowed, and cannot show good cause as to why such failure should be excused, the Court will enter judgment dismissing this action for the reasons set forth in this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf.*

Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Court directs the Clerk of Court to hold this matter open on the docket until a civil judgment is entered.

SO ORDERED.

Dated: August 26, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

____ CV ____
(Include case number if one has been assigned)

-against-

AMENDED

COMPLAINT

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

_____.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or
subject of the foreign state of

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing
information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First NameLast Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, CityStateZip Code

Defendant 2:

First NameLast Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, CityStateZip Code

Defendant 3:

First NameLast Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, CityStateZip Code

Defendant 4:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated		Plaintiff's Signature	
First Name	Middle Initial	Last Name	
Street Address			
County, City		State	Zip Code
Telephone Number		Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.